IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8606 of 1996
with
SPECIAL CIVIL APPLICATION Nos 2171 and 3399 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RASIKLAL M DHARIWAL

Versus

P SAXENA/COMMISSIONER OF I.T

Appearance:
1. Special Civil Application No. 8606 of 1996
MR SN SOPARKAR, Sr. Advocate for Petitioner No. 1
..... for Petitioner No. 2
MR MANISH R BHATT for Respondent No. 1-2
NOTICE SERVED BY DS for Respondent No. 3-4
MR SHYAM S SHEVADE for Respondent No. 5-6

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA
Date of decision: 12/04/2004

COMMON ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

All these petitions pertain to the order of purchase dated 13.9.1996 passed by the Appropriate Authority at Ahmedabad under Section 269UD of the Income-tax Act, 1961. Although the petitions are not required to be decided on merits for the reasons stated hereafter, it is necessary to refer to the basic facts for the purpose of moulding the reliefs.

2.1 On 25.1.1996 Shri Shivram Vishwanath Deshmukh (aged about 60 years) (Vendor No.1) and Shri Vishvas Vishwanath Deshmukh (aged about 58 years) (Vendor No.2) for himself and as the Karta of HUF consisting of himself and his son Shri Ravindra Vishvas Deshmukh (aged about 30 years) [hereinafter referred to as "the vendors"] executed an agreement to sell the property bearing CTS No.573, Final Plot No.662 of TP Scheme No. 1 at Bhamburda, i.e. Shivajinagar in District Pune, Sub-district Haveli in favour of Shri Rasiklal Manikchand Dhariwal (aged about 56 years) and Shri Prakash Rasiklal Dhariwal (aged 31 years) [hereinafter referred to as "the purchasers"] for a consideration of Rs.240 lakhs as per the following schedule :-

"The purchasers shall pay sum of Rs.120 lakhs to vendor No.1, and another sum of Rs.120 lakhs to vendor No.2 as per the following schedule:

Particulars	Vendor No.1	Vendor No.2
	Rs.	Rs.
Upon execution of the agreement on 25.1.1996	37.50 lakhs	37.50 lakhs
To be paid on or before 10.3.1996 by post dated cheque dated 10.3.1996	25.00 lakhs	25.00 lakhs
To be paid at the time of the execution of the conveyance on or before 30.4.1996 by post-dated cheque dated 30.4.1996	57.50 lakhs	57.50 lakhs
	120.00 lakhs	+ 120.00 lakhs

Total = Rs. 240 lakhs.

In accordance with the said agreement, the purchasers paid the following amounts to the vendors:-

Payment made on	Vendor No.1	Vendor No.2
	Rs.	Rs.
25.01.1996	37.50 lakhs	37.50 lakhs
30.03.1996	25.00 lakhs	25.00 lakhs
	62.50 lakhs	+ 62.50 lakhs
Total	= Rs.125 lakhs	

2.2 The parties also agreed to sign Form No.37(I) in accordance with Section 269UC of the Income-tax Act, 1961 as per clauses (8) and (9) of the agreement.

Accordingly on 2.2.1996, the vendors and the purchasers filed Form No.37-I. On 24.5.1996, the order of purchase came to be passed by the appropriate authority under Section 269UD, but that order came to be challenged and this Court set aside the order and remanded the matter to the appropriate authority. On 13.9.1996, the order of purchase came to be passed by the appropriate authority, which is at Annexure "J" to the petition. On the same day, the appropriate authority called upon the vendors to handover vacant possession of the property in question on 30.9.1996.

2.3 On 30.9.1996 the vendors addressed a letter to the appropriate authority stating that they shall handover possession of the property to the appropriate authority alongwith the relevant documents, but the vendors also requested that the entire consideration of Rs.240 lakhs be paid to the vendors in the ratio of 50 : 50. By letter dated 7.10.1996, the purchasers stated that they proposed to challenge the validity of the purchase order by filing a writ petition, but without prejudice to the said right of the purchasers they also requested the appropriate authority not to disburse the entire consideration of Rs.240 lakhs in favour of the vendors as the purchasers had already paid Rs.125 lakhs to the vendors and the purchasers were entitled to get refund of the same. The purchasers also stated as under:-

"We, therefore, hereby request you to pay us sum of Rs.1,25,00,000/-, as and when and if at all

the purchase order shall become final. We hereby request you to at least keep the said amount deposited with the appropriate authority, in accordance with Section 269 UG(2) of the Income Tax Act, 1961. We bring it to your notice that, in view of the dispute, you are under obligation to keep the amount deposited, as provided in Section 269 UG of Indian Income Tax Act, 1961. In spite hereof, if any amounts are disbursed, the Central Government shall alone be responsible for the losses and damages, as we will sustain and we shall be entitled to recover Rs.1,25,00,000/- from the Central Government, together with interest and damages, as stated hereinabove."

2.4 In view of the above dispute between the vendors and the purchasers, by letter dated 24.10.1996, the Chief Commissioner of Income-tax, Pune informed the vendors that in view of the dispute as to the apportionment of the amount of consideration amongst the persons claiming to be entitled thereto, the consideration of Rs.240 lakhs had been deposited with the appropriate authority as required under sub-section (2) of Section 269UG.

2.5 By order dated 13.1.1997 of the Assistant Commissioner of Income-tax on behalf of the Chief Commissioner of Income-tax, Pune, the vendors were called upon to hand over possession of the property to the Assistant Commissioner of Income-tax at Pune.

3. The purchasers filed Special Civil Application No. 8606 of 1996 challenging the order of purchase dated 13.9.1996 and this Court issued notice on 31.1.1997. The petition came to be admitted, but no interim relief was granted.

Thereafter Special Civil Application No.2171 of 1997 came to be filed by both the vendors challenging the orders dated 24.10.1996 and 13.1.1997 and also praying in the alternative that if the petitioners are not entitled to the aforesaid prayers, then the Income-tax authorities be directed to pay both the vendors the entire consideration of Rs.240 lakhs with interest thereon 24% p.a. from 30.4.1996 till the date of payment.

Special Civil Application No. 3399 of 1997 came to be filed by Shri Ravindra Vishvas Deshmukh (son of vendor No.2) challenging the said orders dated 13.9.1996, 24.10.1996 and 13.1.1997 and prayed for the same

alternative relief that the amount of Rs.240 lakhs with interest thereon be paid over to the vendors.

These petitions also came to be admitted, but no interim order was passed.

4. When these petitions have reached hearing, Shri Manish R Bhatt, learned standing counsel for the revenue has been permitted to place on record a copy of the letter dated 8.4.2004 from the Dy. Commissioner of Income-tax, Appropriate Authority, Ahmedabad stating that--

> "an amount of Rs.2,40,00,000/- was initially got released and kept in fixed deposit with a scheduled bank on 30.10.1996. The same was renewed periodically and lastly the amount of Rs.5,34,81,261/- has been renewed on 7.2.2004 for a period of one year"

and further stating that possession of the property has not been taken, but the appropriate authority is still interested in purchase of the property.

5. In view of the contents of the above letter dated 8.4.2004, Shri KH Kaji, learned counsel for the vendors and Shri SN Soparkar, learned counsel for the purchasers state that their respective clients are not interested in pressing their challenge to the order of purchase dated 13.9.1996 and the subsequent consequential orders if the vendors and purchasers are paid the entire amount of consideration of Rs.240 lakhs with interest thereon from 30.10.1996 as aforesaid in the ratio of Rs.115 lakhs : Rs.125 lakhs with interest on the respective amounts from 30.10.1996 and that this would be in full and final settlement of their respective claims in these petitions and that they would have no claim outstanding against each other or the other parties.

Shri Kaji further states that Shri Shivram Vishwanath Deshmukh (petitioner No.1 in Special Civil Application No. 2171 of 1997) be paid 50% of the amount coming to the share of the vendors and similarly Shri Vishwas Vishwanath Deshmukh (petitioner No.2 in the said petition) be paid over the remaining 50% of the share coming to the vendors.

Similarly, Shri Soparkar for the purchasers states that the amount coming to the share of the purchasers may also be paid equally to each of the purchasers in the ratio of 50 : 50. Shri Soparkar has

been permitted to place on record a copy of the letter from the petitioners in SCA No.8606 of 1996 instructing him to withdraw the petition if the purchasers and sellers are paid the amounts prorata from the fixed deposit. Shri Soparkar also states that the purchasers do not claim any interest from the dates of payment of Rs.125 lakhs to the vendors in January/March 1996 till the appropriate authority invested the amount of Rs.240 lakhs in a fixed deposit on 30.10.1996.

Both Shri Kaji and Shri Soparkar further state that this arrangement will also bring to an end any dispute between the purchasers and vendors and none of them will have any claim outstanding against the other.

6. Shri Kaji for the vendors and Shri Shevde for Ravindra V Deshmukh state that Shri Shivram Vishwanath Deshmukh and Shri Vishvas Vishwanath Deshmukh as a Karta have title to the property and have full authority to transfer and sell the property in question and that they shall indemnify the Income-tax department in case of any dispute by any party.

Shri Kaji for the vendors further states that they have never refused to handover possession of the property in question to the Income-tax department and that in any view of the matter, they will now handover the possession to the department within ten days from today.

Shri Shevde appearing for Shri Ravindra Vishvas Deshmukh, petitioner in SCA No.3399 of 1997 further states that the said petitioner is desirous of withdrawing the petition in view of the aforesaid arrangement between the parties and that he has no claim outstanding against the department or the purchasers.

7. Shri Bhatt, learned standing counsel for the revenue submits that since a substantial amount of interest which has accrued on the amount of Rs.115 lakhs and Rs.125 lakhs is to be paid over to the vendors and purchasers respectively, the department will have to deduct the income-tax at source before paying over the amounts of interest to the respective parties.

8. In view of the above consensus between the vendors and the purchasers, all of whom are now agreeable to the order of purchase dated 13.9.1996 being operated, acted upon and implemented, the challenges raised in these petitions are not required to be examined and the petitions are accordingly disposed of in terms of the

following directions :-

(i) The order of purchase dated 13.9.1996 stands and it is open to the Income-tax authorities to act upon the same without any objection from any of the parties.

(ii) The appropriate authority shall encash the fixed deposit of Rs.5,34,81,261/- alongwith the interest thereon from 7.2.2004 and to pay over such amount in the following proportion :-

(a) Rs.115 lakhs with interest accrued thereon from 30.10.1996 till the date of encashment of the aforesaid fixed deposit shall be paid to the vendors-out of which 50% shall be paid to Shri Shivram Vishwanath Deshmukh (vendor No.1) and the balance 50% shall be paid to Shri Vishvas Vishwanath Deshmukh (vendor No.2) as the Karta of HUF consisting of himself and his son Shri Ravindra Vishvas Deshmukh, after deducting at source the tax payable on the interest which has accrued on the original investment made on 30.10.1996.

(b) Similarly, the appropriate authority shall pay Rs. 125 lakhs with interest accrued thereon from 30.10.1996 till the date of encashment of the aforesaid fixed deposit to the vendors - out of the said amount, 50% of the amount shall be paid to Shri Rasiklal Manikchand Dhariwal, Karta of Rasiklal Maniklal Dhariwal HUF and the balance 50% amount to Shri Prakash Rasiklal Dhariwal as a member of Rasiklal Maniklal Dhariwal HUF. These payments shall also be made after deducting at source the tax payable on the interest which has accrued on the original investment made on 30.10.1996.

(c) The above payments shall be made within two weeks from the date of receipt of the writ of this Court or a certified copy of this order, whichever is earlier.

(d) The appropriate authority shall duly

consider the request being made on behalf of the vendors as well as the purchasers that since the parties are residing at Pune, the aforesaid amounts may be paid to the respective parties through cheques/demand drafts payable at Pune.

(iii) Vendors Shri Shivram Vishwanath Deshmukh and Shri Vishvas Vishwanath Deshmukh shall handover vacant possession of the property in question to the authorized representative of the Income-tax Department within ten days from today and Shri Ravindra Vishvas Deshmukh shall not raise any objection thereto.

9. The petitions are accordingly disposed of in terms of the aforesaid directions and observations.

Rule is discharged in each of these petitions with no order as to costs.

Direct Service is permitted.

(M.S. Shah, J.)

(A.M. Kapadia, J.)

sundar/-